

**TITLE 16. PROFESSIONAL FIDUCIARIES BUREAU
DEPARTMENT OF CONSUMER AFFAIRS
EMERGENCY ADOPTION OF DIVISION 41
(Commencing with Section 4400)**

EXPRESS FINDING OF EMERGENCY

A licensing and regulatory program for professional fiduciaries was established by Senate Bill 1550 (Figueroa, Chapter 491, Stats. 2006) that created the Professional Fiduciaries Bureau (Bureau), and was amended by clean-up legislation, Senate Bill 1047 (Committee on Business, Professions, and Economic Development, Chapter 354, Stats. 2007). The licensing and regulatory program that is governed by the Professional Fiduciaries Act (Act) was passed to require licensing of private conservators, guardians, trustees, and agents under durable power of attorney to protect vulnerable consumers including infirmed seniors, disabled persons, and children. Professional fiduciaries provide critical services to these consumers by managing their personal and financial affairs.

Due to the sensitive nature of the fiduciary relationship and the potential for abuse many fiduciary arrangements must be supervised by the court. Therefore, as part of the implementation of the new program, the Act prohibits a superior court from appointing a person as a professional fiduciary on or after July 1, 2008 unless the fiduciary is licensed (Probate Code Section 2340). To ensure that good standing private fiduciaries can obtain timely licensure and that these consumer services are still available come July 1, 2008 it is necessary to adopt emergency regulations to protect the public health, safety, and welfare.

Without timely licensure, many infirmed consumers will be unable to secure services from private fiduciaries to manage their daily living needs. This could be a disaster for individuals who are unable to make decisions regarding their own course of care and treatment or who are unable to understand and manage their personal financial responsibilities. Without timely licensure many of these consumers may have to rely upon family members who lack the appropriate skills or who face potential conflicts with siblings or other relatives, or, these consumers may be forced to hire unskilled workers exposing them to potential negligent care or to individuals that could easily abuse their position of authority and trust and endanger their health and well being.

The Bureau's basis for this finding is as follows:

- Creation of a program to license and regulate professional fiduciaries is necessary to protect the public health, safety, and welfare (SB 1550, SEC 2).
- Regulations must be adopted to establish the Bureau, and implement and make specific the provisions of SB 1550 that relate to the fees of the licensing and regulatory program of the Bureau.
- The Act requires professional fiduciaries to be licensed on or before July 1, 2008 in order to be eligible to receive court appointments when necessary to represent clients' affairs (Probate Code Section 2340).

- Emergency regulations will give professional fiduciaries the opportunity to become licensed prior to July 1, 2008.
- Therefore, it is necessary to adopt these proposed emergency regulations to protect the public health, safety, and welfare.

STATEMENT OF SPECIFIC FACTS SHOWING THE NEED FOR IMMEDIATE ACTION

Professional fiduciaries are not adequately regulated at present. According to SB 1550, this lack of regulation has resulted in the neglect or the physical, emotional or financial abuse of vulnerable clients that professional fiduciaries are supposed to serve. Unless there is strengthened accountability, abuses of people who are unable to take care of themselves or their property by professional fiduciaries will increase (SB 1550, SEC 2).

A fee schedule is needed in conjunction with two prior packages of proposed emergency regulations to timely establish the Bureau and implement the licensing and regulatory program. The first prior proposal adopts a Code of Ethics (which is needed for the immediate development of an examination) and establishes the necessary education criteria (to timely notify candidates of the prelicensure education requirements). The second prior proposal specifies the criteria for the application process, the examination, and for the annual reporting for initial licensing and annual renewal.

The proposed emergency regulations must be adopted immediately to establish the Bureau, and implement and make specific the provisions of the Professional Fiduciaries Act that relate to the fees for the licensing and regulatory program of the Bureau. This will enable qualified candidates to become licensed professional fiduciaries for court appointments before the legislatively mandated deadline of July 1, 2008. These regulations will provide for immediate accountability and oversight, which is necessary to protect the public health, safety, and welfare (SB 1550, SEC. 2).

AUTHORITY AND REFERENCE

Pursuant to the authority vested by Sections 122, 134, 163.5, 6533, 6541, and 6592, and to make specific and interpret sections 122, 134, 152.6, 6533, 6541 and 6592 of the Business & Professions Code, the Professional Fiduciaries Bureau proposes the immediate adoption of Articles 8, of a new Division 41 of Title 16 of the CCR, as follows:

INFORMATIVE DIGEST/PLAIN ENGLISH POLICY STATEMENT OVERVIEW

The Professional Fiduciaries Act (Act) created the Bureau and requires any professional fiduciary practicing in California to be licensed on or after July 1, 2008 in order to be eligible for fiduciary appointments by the court (Probate Code Section 2340). Emergency regulations will allow for the timely implementation of the licensing program to protect consumers needing fiduciary services.

The proposed fee schedule is needed to fund the operations of the licensing and regulatory program of the Bureau. As stated in the new law, the application, license and renewal fees shall be set by regulation at an amount necessary to recover the costs to the Bureau in carrying out the provisions of the Act (Business & Professions Code Sections 6533, 6541, 6592). Therefore, the immediate adoption of the fee regulation is needed, in conjunction with the two prior packages of proposed emergency regulations, to timely establish the Bureau and implement the licensing and regulatory program.

The immediate adoption of a fee schedule will give applicants a fair opportunity to become licensed professional fiduciaries by July 1, 2008 and will protect consumers against potential abuse.

Emergency regulations are needed for public health, safety, and welfare.

SPECIFIC DESCRIPTION OF PROPOSED REGULATIONS

This regulatory action Adds Section 4580 to Article 9 of new Division 41 of Title 16 of the California Code of Regulations. Specifically, this regulatory action:

Article 8. Fees

Adds Section 4580. This section adopts a fee schedule for the Bureau's licensing and regulatory program.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funds to The State: None

Nondiscretionary Costs/Savings to Local Agencies: None

Costs to Any Local Agency or School District for Which Government Code Section 17561 Requires Reimbursement: None

Local Mandates: None

Significant Adverse Impact on Businesses: None

Impact on Jobs/New Businesses:

The regulation establishes authority to collect the application, and initial and ongoing licensing fees from professional fiduciaries. There will be an application fee of \$400 and a licensing fee of \$600 for initial licensing. It will cost each licensee \$700 for annual renewal.

This will have the greatest impact on individual professional fiduciaries, but will also impact employers of professional fiduciaries who cover licensing expenses of employees.

As a new licensed profession, it is hopeful that the licensing program will attract individuals into this career path and create opportunities for new fiduciary services businesses.

Cost Impact on Private Persons or Businesses Directly Affected:

The costs associated with this regulation include only those costs that must be borne by individual fiduciaries or sponsoring businesses.

Effect on Housing Costs: No